IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH AT HYDERABAD

HON'BLE Mr. JUSTICE R. SUBHASH REDDY

Writ Petition No.24351 of 2006

Dated: October 29, 2007

Between:

G. Brahma Reddy, S/o. Sri Subba Reddy,
agedAge: 48 years, Occ: President/Agriculture,
Tsundur Village & Mandal, Guntur District.

… Petitioner

And

The Joint Registrar/District Cooperative Officer,
Guntur, Guntur District, and others.

… Respondents

Order:

Petitioner, President of the Managing Committee of Tsundur Primary Agriculture Cooperative Society, Guntur District (for short 'the Society') has filed this writ petition questioning the validity of the proceedings dated 03-10-2006 issued by the first respondent in R.C.No.6134/2005/C-1 appointing the second respondent as an Enquiry Officer, to conduct enquiry into the affairs of the society, under Section 51 of the A.P. Cooperative Societies Act, 1964 (for short 'the Act').

2. One Mr. Hariprasad Reddy and four others who are the members of the Society filed a representation before the first respondent, Joint Registrar/District Cooperative Officer, Guntur stating that the members of the Managing Committee, Paid Secretary and Accountant of the Society have committed certain serious financial irregularities while sanctioning short-term, medium-term and long-term loans and requested him to order an enquiry to fix the responsibility. The said representation was forwarded to the Divisional Cooperative Officer, Tenali, who in turn called for a preliminary report from the Sub-Divisional Cooperative Officer, Tenali. The Sub-Divisional Cooperative Officer submitted report dated 04-09-2006 to the Divisional Cooperative Officer. Referring in detail to the contents of the report submitted to the Divisional Cooperative Officer, the first respondent, Joint Registrar/District Cooperative Officer, Guntur and finding that there is *prima facie* evidence of irregularities in the functioning of the Society, i.e. selling of fertilizers and granting of loans, ordered regular enquiry as contemplated under Section 51 of the Act.

3. Heard learned counsel for the petitioner, learned Government Pleader for Respondents 1 and 2 and Sri K.S. Murthy for Respondents 3 to 7.

4. Learned counsel for the petitioner submits that the impugned proceedings issued by the first respondent are contrary to the provision under Section 51 of the Act, as in the absence of any representation from not less than 1/3rd of the members of the Managing Committee, or not less than 1/5th of the members of the Society, there is no power conferred on the first respondent to order enquiry. He submits that

though the impugned proceedings indicate that only five members have filed the representation, still enquiry has been ordered. He further submits that as much as the Sub-Divisional Cooperative Officer already conducted an enquiry, no successive enquiries can be conducted on the same set of allegations. Learned counsel for the petitioner, in support of his submission, placed reliance on the order of this court *dated 29-11-2006, passed in W.P.No.10849 of 2004*.

5. On the other hand, learned counsel for the impleaded respondents and learned Government Pleader for Cooperation submit that in view of the report submitted by the Sub-Divisional Cooperative Officer to the Divisional Cooperative Officer, Tenali and on the first respondent, Joint Registrar/District Cooperative Officer finding that there is *prima facie* evidence of irregularities in the functioning of the Society, i.e. selling of fertilizers and granting of loans, has ordered enquiry under Section 51 of the Act and the same cannot be found fault with. They further submit that as much as earlier enquires were not under Section 51 of the Act, it cannot be said that there are successive enquiries on the same set of allegations. Reliance is placed by the learned counsel for the impleaded respondents in the case of **Khadernawaskhanpet Labour Contract Cooperative Society and others Vs. Collector (Co-op) Nellore and others**[1].

6. Before considering the respective contentions of the learned counsel, I deem it appropriate to refer to the provision under Section 51 of the Act, which reads as hereunder:

> " The Registrar, may of his own motion and shall, on the application of a society to which the society concerned is affiliated, or of not less than one third of the members of the Committee, or of not less than one fifth of the total number of

> members of the society, hold an enquiry or direct some person authorised by him by an order in this behalf to hold an inquiry into the constitution, working and financial condition of a society. Such inquiry shall be completed within a period of four months and the report of inquiry along with the findings of the Registrar thereon shall be communicated to the managing committee of the society. It shall be the responsibility of the managing committee to place the inquiry report before the General Body or Special General Body convened for the purpose for its information, within a period of one month from the communication of the inquiry report by the Registrar. The Registrar shall be competent to initiate action under the provisions of this Act, if the committee fails to take action as aforesaid."

7. A reading of the aforesaid provision would make it clear that Registrar is empowered to order enquiry on his own or on the application of the Society of not less than 1/3rd members of the committee or not less than 1/5 of the total members of the Society. In any of the circumstances referred above, enquiry can be ordered by the Registrar. Once the enquiry is completed, it is obligatory on the part of the Managing Committee to place the enquiry report before the Special General Body convened for the said purpose. Though in the instant case enquiry proceedings are initiated on the representation filed by the members of the Society, however, the said representation was not acted upon straightway to order enquiry under Section 51 of the Act. In view of the representation filed by the said members, preliminary enquiry was conducted by calling for a report from the Sub-Divisional Cooperative Officer, Tenali, who had submitted the same to

the Divisional Cooperative Officer, which in turn was submitted to the District Cooperative Officer. Having perused the said report and having *prima facie* found that there are serious financial irregularities in the functioning of the Society, the first respondent ordered a regular enquiry under Section 51 of the Act. Merely because there is no representation from not less than 1/5th of the members of the Society, it cannot be said that there is no power conferred on the Joint Registrar/District Cooperative Officer to order enquiry under Section 51 of the Act. A comprehensive reading of the provision under Section 51 of the Act would make it clear that in the event of filing a representation by not less than 1/5 of the total number of members of the Society, it is obligatory on the part of the Registrar to hold an enquiry under Section 51 of the Act and even in case where the application is made by less than 1/5th of the members of the Society, in view of the preliminary enquiry report, still the Registrar can use his discretion and order an enquiry into the affairs of the Society.

8. As much as the enquiry is not solely based on the representation filed by the members of the Society, the enquiry has to be construed as an enquiry conducted by the Divisional Cooperative Officer, based on the findings recorded in the preliminary report of the Sub-Divisional Cooperative Officer. In the judgment relied on by the learned counsel for the impleaded respondents, which is referred supra, it is held that even where there is no application by the number of members specified in Section 51 of the Act, still it is within the discretion of the Registrar whether to take action or not under Section 51 of the Act.

9. In that view of the matter, I do not find any force in the first submission made by learned counsel for the petitioner that in the absence of any representation from not less than 1/5th of the total

members of the Society, no enquiry can be conducted. With regard to the other submission, namely that there is no power conferred on the Registrar to conduct successive enquiries, it is to be noted that based on the representation filed by some members of the Society, matter was referred to the Sub-Divisional Cooperative Officer, who has conducted enquiry and submitted a report. The said enquiry cannot be termed as an enquiry under Section 51 of the Act. Under Section 51 of the Act, only the Registrar is empowered to order an enquiry. However, it is to be noted that a preliminary report was prepared by the Sub-Divisional Cooperative Officer and the same is not a statutory report under Section 51 of the Act. In that view of the matter, it cannot be said that there are successive enquiries under Section 51 of the Act. Moreover, the enquiry contemplated under Section 51 of the Act is an enquiry to probe into the financial conditions of the Society. The Society, as such, has not objected to the same. Hence, there are no grounds to stall the enquiry only at the instance of the Managing Committee.

10. In the circumstances and for the reasons stated above, I do not find any illegality in the impugned proceedings, whereby the first respondent has ordered enquiry under Section 51 of the Act, warranting interference of this court under Article 226 of the Constitution of India.

11. The writ petition is devoid of merits and is accordingly dismissed. No order as to costs.

JUSTICE R. SUBHASH REDDY.

October 29, 2007
MRR

[1] **1980 (1) APLJ 319**